

Cedar Cr.
Surprise Valley

In the Superior Court in and for the County of Modoc, State of
California

D. H. Lighty, Plaintiff,

vs.

John R. Cook, Isabelle Cook, James
Wylie, Helen A. Cambridge, and
Alice Hironymous as Administratrix
of the Estate of Jesse Hironymous,
Deceased, Defendants.)

Judgment. 1206

This cause came on to be heard in open court this 22nd day of May A. D. 1901; Spencer & Raker appearing as attorneys for Plaintiff, and C. F. Harris as attorney for the defendants John R. Cook and Isabelle Cook; H. L. Spargur for the defendants James Wylie and Alice Hironymous as Administratrix of the Estate of Jesse Hironymous, deceased, and E. C. Bonner as Attorney for Helen A. Cambridge; and it appearing to the satisfaction of the Court that the respective parties, through their respective attorneys above named, have stipulated and agreed that a compromise be entered into and a Judgment be made and entered in said court and cause, on the following terms and conditions, to wit:-

-I-

That it be adjudged and decreed that the plaintiff and defendants are the owners of the waters of Thoms Creek as described in the Amended Complaint herein, to the amount of 250 inches of said water measured under a 4-inch pressure, to be diverted, owned and used respectively by the parties as herein stipulated and agreed; and that the plaintiff and defendants and their grantors respectively, entered upon said Thoms Creek at a point as alleged in the complaint, and made a ditch and dam and flumes, as described in the Complaint herein ^{and} ~~made~~ conducted the waters thereof from Thoms Creek over Cedar Pass, into Cedar Creek, and used Cedar Creek as a water way down to the point described in the Amended Complaint herein, and diverted and appropriated the waters of Thoms Creek by and through said means therein alleged.

-II-

That the defendants John R. Cook and Isabelle Cook are the joint owners of the ditch to be designated herein as "Ditch No. 1", which is above the ditch described in the Amended Complaint. The ditch described herein in Paragraph No. V of the Amended Complaint will be designated as "Ditch No. 2". And there is another ditch further down the stream and below Ditch No. 2, taking water from Cedar Creek, which will be designated as Ditch No. 3.

-III-

That said Judgment shall be entered decreeing that the waters of Thoms Creek diverted and appropriated as aforesaid by and through the means hereinbefore alleged, and by and through the dam, ditch

and flumes taking the water from Thoms Creek over Cedar Pass, dumping it into Cedar Creek, and down Cedar Creek until it reaches the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 6, N, R 16 E. M.D.M., Township 42, shall be diverted from Thoms Creek by said dam, through said ditch leading from Thoms Creek and the flume connected therewith, to where it conveys the water over Cedar Pass into Cedar Creek, then down Cedar Creek to where it is diverted as hereinafter stipulated and adjudged shall be the means and ways of diverting and appropriating the said 250 inches of water measured under a four inch pressure, from the waters of Thoms Creek, by the parties thereto, and their successors in interest.

IV.

That said Judgment shall be entered decreeing that the waters of Thoms Creek shall be divided into sixty-fourths as follows.

1. That said John R. Cook and Isabelle Cook shall have, own and use twenty-four sixty-fourths of said waters.

2. That said D. H. Lighty shall have, own and use nine sixty-fourths of said waters.

3. That said Helen A. Cambridge shall have, own and use seven sixty-fourths of said waters.

4. That said Alice Hironymous as Administratrix of the Estate of Jesse Hironymous, deceased, shall have, own and use eight sixty-fourths of said waters.

5. That said James Wylie shall have, own and use sixteen sixty-fourths of said waters.

CFS

1.875

.70

.55

.625

1.25

V.

That said Judgment shall be entered decreeing that said John R. Cook and Isabelle Cook may divert and use through Ditch No. 1, or through Ditch No. 2, which is the ditch described in the Amended Complaint herein, or Ditch No. 3, at their option their portions of said waters.

5.000

VI.

That said Judgment shall be entered decreeing that said David H. Lighty may divert and use his waters through Ditch No. 2, being the ditch described in the complaint, and through said ditch where it crosses the SW $\frac{1}{4}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, all in Section 6, Twp., 42 N, R 16 E. M.D.M., to where it leaves the Northeast corner of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 6, at which point the said D. H. Lighty is to place a box, and use his waters at said point.

VII.

That said Judgment shall be entered decreeing that the defendant James Wylie shall divert and use his waters at Ditch No. 3, which is taken out of Cedar Creek where ~~xxx~~ said Cedar Creek enters the west side of the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Sec. 6, Twp. 42 N, R 16 E. M.D.M.

VIII.

That said judgment shall be entered decreeing that the Defendant, Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased, shall divert and use her share of said waters through Ditch No. 3, which is the ditch through which said Wylie is to use his waters, or at any other point on Cedar Creek below Ditch X No. 2 that the same may be desired to be used or taken from Cedar Creek.

IX.

That said Judgment shall be entered decreeing that the defendant Helen A. Cambridge may divert and use her share of the said waters from Cedar Creek at any point on Cedar Creek.

XI

That said Judgment shall be entered decreeing that all matters shall be and are adjudged and settled between the Plaintiff and Defendants growing out of the matters and things alleged in the complaint herein, and are settled and forever ended.

XII

That said Judgment by its terms shall direct and decree that each of the parties to this stipulation shall assist in keeping the dam or dams in Thoms Creek, and ditches and flumes leading therefrom, and Cedar Creek as a water way, in repair and condition, each putting in his labor and materials and expense therein and thereto, to the proportion of the amount of water owned by each therein, to wit: John R. Cook and Isabelle Cook twenty-four sixty-fourths; (b) David H. Lighty nine sixty-fourths; (c) Helen A. Cambridge seven sixty-fourths; (d) Alice Hironymous as Administratrix of the Estate of Jesse Hironymous, deceased, eight sixty-fourths; and (e) James Wylie sixteen sixty-fourths thereof.

XIII

That said judgment by its terms shall direct and decree that the Plaintiff D. H. Lighty shall have the right to run the water diverted by him through the Ditch No. 2, over the lands where said ditch crosses as it is now constructed, and to take the same from said ditch where it leaves the northeast corner of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 6 so that he may convey the same from there on onto his (said Lighty's) premises described in the Complaint herein; and that he shall keep said ditch in repair over the lands owned by J. R. Cook and Isabelle Cook being the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and E $\frac{1}{2}$ of NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 6, in Twp. 42 N, R 16 E. M.D.M. at his own cost and expense, to the proportion owned by him as compared to the proportion of the waters owned by J. R. Cook and Isabelle Cook.

XIV.

That said judgement by its terms shall direct, adjudge and decree That the defendant James Wylie shall take his water allowed to him by said decree, out of said creek through Ditch No. 3, and then out of the continuation of said ditch near the northeast corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 6, where he now diverts his water from said ditch.

XV.

That said Judgment by its terms shall direct, adjudge and decree, that whenever there is a surplus of the waters owned by the defendants John R. Cook and Isabelle Cook, then and in that event the said surplus thereof may be used by said Plaintiff D. H. Lighty, through the same means as the waters owned by him provided for in this stipulation and decree; provided that water reasonably and properly used upon any crops growing upon the lands owned by J. R. Cook and Isabelle Cook as above-described, shall not be deemed surplus or waste water; while the portion of their water not thus used shall be considered as surplus or waste water.

-XV 1/2-

That D. H. Lighty shall not at any time enter upon the lands of J. R. Cook and Isabelle Cook without their, or their legal representatives' consent, but the repair of the ditch and the measurement of the water shall only be done as in this stipulation provided; provided that at all times a representative, or employee, or assignee of D. H. Lighty may enter upon said lands of said last named defendants, for the purpose of repairing said ditch and measurement of water. That no damages shall be awarded for any accidental breaking of Ditch No. 1.

XVI.

That said Judgment by its terms shall direct that the waters shall not be run to waste by any of the parties hereto; and when there is not sufficient water of Thoms Creek to which the said parties are entitled, flowing in Cedar Creek, at the head of the ditches hereinbefore named to reach the lands of the parties hereto, by reason of evaporation or absorption, then the defendants John R. Cook and Isabelle Cook shall be entitled to use all of the said minimum quantity of water.

-XVII-

That said Judgment by its terms shall direct and decree that D. J. Benner, or the town of Cedarville, Modoc County, shall be and is hereby appointed to see that the water owned by said D. H. Lighty is properly conducted through Ditch No. 2, and over the lands through which Ditch No. 2 crosses, to where it discharges the waters thereof at the northeast corner of the SE $\frac{1}{4}$ or the NE $\frac{1}{4}$ of said Section 6, if the said waters turned in at the head of said ditch No. 2 is not discharged at the point and place where it enters the southwest corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 5, said Township and Range; or such other good responsible man to be selected by the parties, provided said D. J. Benner fails to act; and if the parties cannot agree upon a person for such purpose, then such person to be appointed by the court upon five days' notice to the other party. Provided nevertheless, that if said John R. Cook and Belle Cook, or either of them, are unable or fail from any cause to keep said water in said ditch, then it is the duty of said D. H. Lighty to keep the said ditch in repair as in this stipulation elsewhere provided, so that the water may be delivered at the point above specified, at his own costs and expense.

XIX.

That said Judgment by its terms shall direct that a certified copy thereof shall be filed and recorded in the office of the County Recorder as a Deed and indexed, each of the parties hereto paying his proportion of the costs thereof, to the amount of the water owned by each per this decree.

XX.

That said Judgment shall be entered without costs to either of the parties, and that each party pay his own costs and disbursements.

NOW, THEREFORE, fully considering the foregoing stipulations, admissions, compromise and statements so made and understood in open Court as above, and in view of the allegations of the pleadings on file and of the premises it is by the Court,

ORDERED, ADJUDGED AND DECREED,

FIRST; That plaintiff and defendants are the owners of the waters of Thoms Creek as described in the Amended Complaint herein, to the amount of 250 inches of said waters measured under a 4-inch pressure, to be diverted

and owned and used respectively by the parties as herein stipulated and agreed, and that the plaintiff and defendants, and their grantors respectively, entered upon said Thoms Creek at the point alleged in said Complaint, and made a ditch and dam and flume therein as described in said complaint and conducted the waters thereof from Thoms Creek over Cedar Pass into Cedar Creek, and used Cedar Creek as a water way down to the point described in the Amended Complaint herein, and diverted and appropriated the waters of Thoms Creek by and through the means alleged therein.

Second: That the defendant John R. Cook and Isabelle Cook are the joint owners of the ditch to be designated herein as Ditch No. 1, which is above the ditch described in the Amended Complaint. The ditch described in Paragraph V of the Amended Complaint will be designated as Ditch No. 2, herein. And there is another ditch further down the stream and below Ditch No. 2, taking water from Cedar Creek which will be designated as Ditch No. 3 herein.

THIRD: That the waters of Thoms Creek diverted and appropriated as aforesaid, by and through the means herein before alleged, and as alleged in the Amended Complaint, and by and through the dam, ditch and flumes taking the water from Thoms Creek over Cedar Pass, dumping it into Cedar Creek, and down Cedar Creek until it reaches the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 42 N, R 16 E. M.D.M., shall be diverted from said Thoms Creek by said dam through said ditch leading from Thoms Creek and the flume connected therewith, to where it conveys the water over Cedar Pass into Cedar Creek, then down Cedar Creek to where it is diverted as hereinbefore stipulated shall be and is the way and means of diverting and appropriating the said 200 inches of water measured under a 4 inch pressure of and from the waters of Thoms Creek, by the parties hereto and their successors in interest.

FOURTH: That the waters of Thoms Creek so diverted shall be and hereby are divided into sixty-fourths, as follows:

1. The said John R. Cook and Isabelle Cook shall own and hereby are decreed to own and have the right to use twenty-four sixty-fourths of said waters.

2. The said D. H. Lighty shall own and hereby is decreed to own and have the right to use nine sixty-fourths of said waters.

3. The said Helen A. Cambridge shall own and is hereby decreed to own and have the right to use seven sixty-fourths of said waters.

4. The said Alice Hironymous as administratrix of the estate of Jesse Hironymous, deceased, shall own and hereby is decreed to own and have the right to use eight sixty-fourths of said waters.

5. The said James Wylie shall own, and hereby is decreed to own and have the right to use sixteen sixty-fourths of said waters. $\frac{16}{64} \times 250 = .625$

FIFTH: That said John R. Cook and Isabelle Cook may divert and use through Ditch No. 1, or through Ditch No. 2 or No. 3, which is described in the amended complaint and stipulation, at their option their portion of said waters thus owned by them.

SIXTH: That said D. H. Lighty may divert and hereby is decreed to have the right to divert and use his waters, thus owned by him, through Ditch No. 2, being the ditch described in said Complaint, and through said ditch where it crosses the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ and NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ or NE $\frac{1}{4}$ all of Sec. 6, Twp. 42 N, R 16 E. M.D.M., to where it leaves the northeast corner of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 6, at which point said D. H. Lighty is to place a box and use his waters from said point.

SEVENTH: That said defendant James Wylie shall divert and hereby is decreed to have the right to divert and use his waters at and through Ditch No. 3, which is taken out of Cedar Creek where said Cedar Creek enters the west line and side of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Sec. 6, Twp. 42 N, R 16 E. M.D.M., and thence north and northeasterly to and onto the lands owned by him.

EIGHTH: That the defendant Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased, shall divert and is hereby decreed to have the right to divert and use her share of said waters through said Ditch No. 3 which is the ditch through which said Wylie is to use his waters, or at any other point on Cedar Creek below ditch No. 2, where the same may be desired to be taken from Cedar Creek by said Hironymous or her successors in interest.

NINTH: That the defendant Helen A. Cambridge may divert, and hereby is decreed to have the right to divert and use her share of said waters from Cedar Creek at any point on Cedar Creek.

TENTH: That all matters and things shall be and hereby are adjudged to be, and are settled by and between the plaintiff and the defendants, and by and between the defendants, growing out of the matters and things alleged in the complaint herein and are forever ended and determined.

ELEVENTH: That each of the parties shall assist and are hereby directed to assist in keeping the dam or dams in Thoms Creek, and ditch and flume leading therefrom, and Cedar Creek as a water way, in repair and condition, so that the waters of Thoms Creek may be diverted from Thoms Creek through the means as aforesaid, to and down Cedar Creek to the heads or the ditches hereinbefore respectively described, each putting in his or her labor and material and expense therein, thereto and therefor to the proportion of the amount of water owned by each therein, to wit:-

(a) John R. Cook and Isabelle Cook twenty-four sixty fourths thereof; (b) David H. Lighty nine sixty-fourths thereof; (c) Helen A. Cambridge seven sixty-fourths thereof; (d) Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased, eight sixty-fourths thereof; and (e) James Wylie sixteen sixty-fourths thereof.

TWELFTH: That it be and hereby is, directed and decreed that the Plaintiff D. H. Lighty, shall have the right to run the water diverted and owned by him over the lands crossed by said Ditch No. 2 as hereinbefore described, and to take the water from said ditch where it leaves the northeast corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 6, Twp. 42 N, R 16 E. M.D.M., so that he may convey the same from there on onto his (said Lighty's) premises described in the said Complaint herein; and that he shall keep said ditch in repair over said lands at his own costs and expense, to the proportion owned by him as compared to the portion of the waters owned by said John R. Cook and Isabelle Cook.

THIRTEENTH: That the defendant James Wylie shall take his portion of the said waters decreed to him by this Decree, out of said Cedar Creek through Ditch No. 3, and then out of the continuation of said ditch at the northeast corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Sec. 6, Being the place now used by him.

FOURTEENTH: That it is further directed and decreed that D. J. Benner of the town of Cedarville, Modoc County, shall be and is hereby appointed to see that the water decreed to be owned by the said D. H. Lighty, by this Judgment and Decree, is properly conducted through Ditch No. 2 over the lands crossed by said Ditch No. 2, to where said Ditch No. 2 discharges the waters thereof at the northeast corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Sec. 6, if the said water turned in at the head of said Ditch No. 2 from Cedar

Creek is not discharged at the point and place last above named, where it enters through said ditch the Southwest corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 5, in said Twp., and range aforesaid; or such other good responsible man to be selected by the parties, provided that D. J. Benner fails to act; and if the parties cannot agree upon a person for such purpose, then such person to be appointed by the Court upon five days' notice, given by Lighty to said John R. Cook and Isabelle Cook, or by said Cooks to said Lighty. Provided, nevertheless, that if said John R. Cook and Isabelle Cook, or either of them, are unable or fail, from any cause, to keep said water in said ditch, and keep said ditch in repair, then and in that event, it is hereby made the duty of said D. H. Lighty as in the foregoing stipulation provided to keep said ditch in repair at his own costs and expense, so that the water may be diverted at the point and place above specified herein.

FIFTEENTH: That it is hereby directed and decreed, that the waters shall not be run to waste by any of the parties hereto; and when there is not sufficient water of Adams Creek to which these parties are entitled, flowing in Cedar Creek at the head of the ditches herein named, to reach the lands of the other parties hereto, by reason of evaporation or absorption, then the defendant J. R. Cook and Isabelle Cook shall be entitled to use all of said minimum quantity of water; and that whenever there is any surplus or waste water of the waters decreed to the defendants J. R. Cook and Isabelle Cook, then and in that event the said surplus and waste water thereof may be used by the said Plaintiff D. H. Lighty, through the same means as the waters decreed to be owned by him as provided for in this Judgment. Provided that water reasonably and properly used upon any crops growing upon said lands owned by John R. Cook and Isabelle Cook (~~being the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, the E $\frac{1}{2}$ of NE $\frac{1}{4}$, and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 6, Twp. 42 N, R 16 E. M.D.M.) shall not be deemed surplus or waste water; while the portion of their water not thus used shall be considered as surplus or waste water.~~

It is further directed and decreed, that D. H. Lighty shall not at any time enter upon the lands of J. R. Cook and Isabelle Cook, without their or their legal representatives' consent, but the repair of the ditch and the measurement of the water shall only be done as in this stipulation and Judgment provided; provided that at all times a representative, employee or assigns of D. H. Lighty may enter upon said lands of last named defendants for the purpose of repairing said ditch and measurement ~~in~~ of water. It is further directed that no damage shall be awarded for the accidental breaking of Ditch No. 1.

SIXTEENTH: That a certified copy of this decree shall be filed in the office of the County Recorder of Modoc County as a Deed, in the record of Deeds, and indexed in the name of each of the parties hereto and each of the parties hereto paying his proportion of the costs thereof to the amount of water owned and decreed to each per the terms hereof.

SEVENTEENTH: It is hereby further Ordered, Adjudged and Decreed, that this Judgment and Decree shall bind the grantee or grantees, heir or heirs, administrators or assigns of the said Plaintiff and of the said Defendants, and each of the defendants in and to the subject matter by this decree dealt with.

EIGHTEENTH: It is hereby further ordered, adjudged and decreed, that each party in said action pay his own costs and disbursements, and that neither party recover any costs or disbursements from any of the others.

Dated and done in open Superior Court this 22d day of May A. D. 1901.

(signed) J. W. Harrington,
Judge of the Superior Court.

The above and foregoing stipulation for Judgment, by and on behalf of the respective parties herein, and by and through their respective attorneys of record, is made with their consent and agreement, and by reason of the said facts and law the above and foregoing stipulation of facts and Judgment and Decree is consented to, and the same be signed by the Judge and thereafter duly filed and entered as a Judgment and Decree of said court in said cause.

Witness our hands this 18th day of May, A. D. 1901.

Clarence A. Raker, and Spencer & Raker, Attorneys for Plaintiff. G. F. Harris, Attorney for Defendants, John R. Cook and Isabelle Cook, E. C. Bonner, Attorney for Defendant, Helen A. Cambridge, H. L. Spargur, Attorney for Defendants, James Wylie and Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased.

Endorsed: "Filed May 22nd, 1901, L. S. Smith, Clerk, entered May 25th, 1901, Book 3 of Judgments, Page 256 and following."

Office of the County Clerk ()
County of Modoc,) SS:
State of California)

I, L. S. Smith, County Clerk of the County of Modoc, State of California, and ex-officio Clerk of the Superior Court of said Modoc County, do hereby certify the foregoing to be a full, true and correct copy of original Judgment and Decree in the above-entitled court and cause, filed in my office on the 22nd day of May, 1901, and that the same was entered of record May 25th 1901 in Book 3 of Judgments, Records of said Court, at pages 256 et. seq.,

Witness my hand and the seal of said Court affixed this 31st day of May, A. D. 1901.

L. S. SMITH
County Clerk and ex-officio Clerk of the
Superior Court in and for the County of Modoc,
State of California.